

**Domestic Violence Coordinating Council
Legislative Subcommittee Meeting Minutes
November 16, 2015**

In attendance were: Senator Patricia Blevins, Senate and Chair; Attorney General Matt Denn, DOJ and Chair; Senator Cathy Cloutier, Senate; Representative Stephanie Bolden, House of Representatives; Linda Carmichael, Superior Court; Patricia Dailey Lewis, DOJ; Jacki Aff, CCP; Mariann Kenville-Moore, DCADV; Addie Asay, Family Court; Lisa Minutola, ODS; Kim Siegel, DOJ; Kara Swasey, Family Law Section; Natasha Smith and Ellie Torres, DVCC.

Senator Blevins called the meeting to order and the meeting minutes from February 13, 2015 were approved with a minor change.

An update of the legislation from the February meeting included HB 132 that added former parents to the PFA statute. The bill was signed by the Governor on July 28, 2015. HB 7 added strangulation to the list of violent felonies and was signed on September 3, 2015. SB 83 amending the person prohibited statute and adding procedures for gun relinquishment to the PFA statute was signed on October 2, 2015.

SB 55 would extend ex parte PFA orders from 10 days to 15 days. That bill is assigned to the Senate Judiciary Committee. Because of a recent decision in Family Court to stay a PFA proceeding pending the outcome of the criminal proceeding, a request was made to consider extending ex parte orders beyond 30 days in situations in which the respondent requests the extension or stay. This would amend the same section, 10 Del. C. § 1043(d), of the Code as SB 55. A stay might be requested by respondents in a PFA proceeding to avoid testimony in a PFA hearing later being used in the pending criminal proceeding. Some states have amended their PFA statute to prohibit testimony in the PFA hearing from being used in the criminal proceeding. Lisa Minutola expressed a concern from the position of defense counsel that while the testimony might not be admissible as to disclosures made by respondent, the testimony can be used to impeach respondent if the testimony has changed from the previous proceeding. Because the Family Court decision to stay the PFA in these cases is a recent decision, it was decided to hold off on legislative changes to the ex parte section of the PFA statute and reconsider the issue at the next meeting.

Adding offensive touching to endangering the welfare of a child statute will require further research and will remain as old business.

Representative Lynn has a draft bill to amend the custody statute regarding child testimony to include testifying in PFA hearings. The intent is to allow children to testify outside the presence of the parties so they will feel less intimidated and traumatized. Concerns were raised about counsel and the parties having an opportunity to listen to the recording of the testimony and the possibility of rebutting the testimony. It was suggested that children testifying remotely might be a better option. There is already a means for

remotely testifying in criminal matters. Representative Lynn's legislative aide indicated that this was the intent of the legislation and a revised bill would be provided to the committee in a few days. An additional issue was raised regarding training for judicial officers and attorneys on interviewing children. This might be something the Family Court Enhancement Project could consider as a recommendation and will be forwarded to the committee.

The misdemeanor criminal jurisdiction of Family Court is limited to the definition of family in 10 Del. C. §901(12) which includes spouses, couples cohabitating with a child of either or both, siblings, parents, children and grandparents and grandchildren. All other intimate partner relationships including ex-spouses, couples cohabitating without a child, couples with a child in common but not cohabitating, and couples in a substantive dating relationship, are within the jurisdiction of the Court of Common Pleas. Civil PFA jurisdiction includes all the above relationships. Extending Family Court misdemeanor criminal jurisdiction to include the additional relationships would decrease confusion for the public, allow for PFA orders and probation conditions to be coordinated, concentrate more domestic violence information in the Family Court and thereby render that information more accessible for administrative and substantive use in related and subsequent proceedings, especially custody, and provide greater consistency in sentencing.

Draft language was circulated to include ex-spouses and persons with a child in common whether or not the couple is cohabitating, but also additional language was included that would capture cohabitating couples without children and those couples in substantive dating relationships. The latter groups would need some additional consideration as to the difficulty of properly identifying those couples.

There was not a concern from the Attorney General with the transfer of jurisdiction to Family Court, and it was noted that the same unit within the Department of Justice would handle the cases in either court. Family Court has inquired into the number of cases that are currently going to CCP and a request has been made to DELJIS to estimate the impact. At this point, Family Court and CCP will continue to discuss the issue. Whether substantive dating relationships are included will require additional information on the difficulty for law enforcement to make that determination at the time of arrest.

Regardless of any changes to the criminal jurisdiction, the definition of family needs to be amended to replace "husband and wife" with "spouse," and "man and woman" with "couple." That bill will be drafted and circulated.

Draft amendments to the DVCC statute and the FIRT statute were distributed and discussed. The change to the DVCC statute is to allow elections of chair and vice chair every other year rather than annually. The changes to the FIRT statute would clarify the near-death definition, require reporting of domestic violence death and near-death incidents by agencies, and add to the membership of FIRT. An issue was raised with including "risk of serious physical injury or death" in the near-death definition. It is broad and it also would require the reporting agencies to report a significant number of cases. Another issue was raised regarding reviewing near-deaths without the consent of the

victim. A suggestion was made to add a requirement that the consent of adult victims be obtained before reviewing a near-death.

Probation and Parole requested that the DVCC consider legislation to specify in the statute for the First Offenders Domestic Violence Diversion Program that the probationers must attend and complete a DVCC certified treatment program. Currently, the statute only requires a counseling program without specificity as to the type of treatment program. Probationers will occasionally attend other programs and it is difficult for Probation to enforce without the specific language in the Family Court order.

Two bills that were introduced on June 30th were brought to the attention of the committee. HB 1 mandates that universities report sexual assault on campus to law enforcement. The victim advocacy community is concerned that mandatory reporting takes the decision away from victims and the criminal justice system is not always the best option for victims. The purpose of the legislation is to address that universities are discouraging students from reporting to reduce the crime numbers on campus. The Joint Task Force Legislative Committee (Victims' Rights Task Force, Domestic Violence Task Force, and the Sexual Assault Network of Delaware) are hopeful that other options can be considered and discussed with the universities to minimize their involvement in making the decision for victims. The Attorney General suggested the possibility of scripting what the university can say to victims to avoid any influence against reporting the matter to the local law enforcement agency.

HB 215 provides a privilege for advocates to avoid them being compelled to testify regarding the disclosures of victims. The bill provides for exceptions if there is a clear, imminent risk of serious physical injury or death of the victim or another person, and does not apply if the services of the advocate were sought to commit or plan to commit a crime or fraud.

The meeting was adjourned and the next meeting will be scheduled in February.